IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1348/06

Shri.Vishwanath @ Vishnu S. Kudale .....Applicant

V/s.

The state of Maharashtra .... Respondent

Shri.Uday P. Warunjikar, adv for the applicant

Miss.S.D. Shinde, APP for the State

CORAM : V.M. KANADE, J.
DATE : 19/04/06

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 29/12/2005 in connection with C.R.No.94/2004 registered with Hinjawade Police Station, Pune for the offence punishable U/s.302, 301 r/w 34 of IPC. Chargesheet has been filed.

3. It is the case of the prosecution that the applicant is absconding and therefore, the trial proceeded against other accused. However, the other accused were acquitted by the Sessions Court. After the

acquittal of other accused, the present applicant was arrested and thereafter, fresh chargesheet was filed and case is committed to the Sessions Court. It is submitted that other accused were on bail during the trial and they were acquitted by the Sessions Court. It is submitted that the prosecution is relying on the very same evidence which was accepted by the Sessions Court. It is submitted that the allegations of the prosecution that he was absconding is not correct as he was very much residing in his own village being agriculturist.

4. Learned APP appearing on behalf of the State invited my attention on the statements of two witnesses who have allegedly seen the applicant and other co-accused Somnath when they were last seen in the company of deceased and thereafter, seen washing their blood-stains clothes in the river. She submitted that since, the applicant was absconding, there is every possibility that he may not face the trial if he is released on bail.

5. Taking into consideration the fact that the other accused have been acquitted and chargesheet has been filed against the present applicant, in my view, the applicant is entitled to be released on bail. So

far as the allegations that the applicant was absconding and was not traced during the earlier trial is concerned, there is no record produced by the I.O. to indicate the steps which he had taken to arrest the present applicant.

6. In my view, the applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount. The applicant shall report to the Hinjwadi Police Station, Pune. The applicant shall not tamper with the evidence or threaten the witnesses.

7. If any complaint is received by I.O. against the present applicant, liberty is given to the Public Prosecutor to apply for cancellation of bail.

8. Trial court shall not be influenced by any observations made by this court while passing this order and the same may not be construed to mean as an expression of opinion of the case and decide the case on its own merit and in accordance with law.

9. Application is accordingly disposed of.

V.M. KANADE, J.